

62. The method of claim 61, wherein using a cold spray process forms a metal alloy coating having an average grain size of less than twenty-two microns.

61 63. The method of claim 61, wherein providing the medical device includes forming the medical device into a stent.

REMARKS

Claims 25-57 were pending, examined and rejected in the January 16, 2003 Office action. Claims 58-63 have been added in this Amendment, which Applicant believes does not add new matter to the application. No claims have been amended or deleted by this Amendment. Thus, claims 25-63 are now pending in this application. Applicant respectfully requests reconsideration of this application.

REJECTIONS UNDER 35 U.S.C. § 112

Claim 32 stands rejected under 35 U.S.C. § 112, second paragraph, and the Examiner requested clarification whether the claimed metallic coating is applied via cold thermal spraying. Applicant respectfully submits that the only reasonable interpretation of the claim is that the coating recited in claim 25 is further limited to a metallic coating in claim 32, wherein the metallic coating is formed by one of the thermal spray processes in the Markush group recited in claim 25, e.g., cold spray. Accordingly, Applicant respectfully requests that the rejection under §112 be withdrawn.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 25-26, 28-29, 31 and 44 stand rejected under 35 U.S.C. § 102(a) as being anticipated by the article by Herman et al. "Thermal Spray: Current Status and Future Trends" (MRS Bulletin, July 2000, pp. 17-25). Applicant respectfully traverses these rejections. In order to maintain a rejection under §102, the Office must show that each and every element of Applicant's claimed invention is disclosed in the cited reference. Applicant submits that Herman fails to teach that the thickness of the coating may be varied on the medical device as recited in Applicant's claim 26 and that the rejection of that claim should be withdrawn. In accordance with the Restriction Requirement, Applicant has provided for examination claims 58-60, which Applicant respectfully submits are in condition for allowance.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 27, 30, 32-43 and 45-57 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Herman, standing alone. Applicant respectfully traverses these rejections. Applicant submits that Herman fails to teach several elements of Applicant's claims that make evident the non-obviousness of the claimed invention, including that the thickness of the coating may be varied on the medical device (claim 27), that the medical device may be a stent (claims 43 and 47) and that the sprayed metal alloy coating has an average grain size less than thirty-two microns (claims 50 and 51). Applicant notes that although a stent is an implantable medical device, Herman's recitation of biomedical

implants does not include stents, nor does Herman provide a suggestion or teaching to apply a cold spray process to coating stents with a metal alloy.

Furthermore, Herman states the method can be used for making biomedical implants (orthopedic and dental parts). However, there is no mention or suggestion relating to its application on stents. Just because Herman merely mentioned "biomedical implants" does not provide a teaching or suggestion that the disclosed method can be used on all biomedical implants, knowing in the medical art biomedical implants may vary from orthopedic parts to drug containing microparticles, and yet Herman only pointed out orthopedic and dental parts. Herman gives no guidance on whether the method can be used on stents, just as it did not give guidance on whether the method can be used on drug containing microparticles. There must be some suggestion to try with reasonable expectation of success for a prior art reference to render an invention obvious. Such a suggestion is absent in the Herman reference.

Accordingly, Applicant respectfully submits that Herman does not render obvious Applicant's claims 27, 43, 47, and 50-51 as a whole, and that the rejection of those claims should be withdrawn. In accordance with the Restriction Requirement, Applicant has provided for examination claims 61-63, which Applicant submits are in condition for allowance.

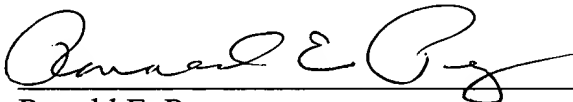
Applicant is filing concurrently herewith a Supplemental Information Disclosure Statement for the above-referenced application.

CONCLUSION

In view of the foregoing, Applicant respectfully submits that the claims are in condition for allowance, and that the application should be passed to issue. The Examiner is encouraged to contact the undersigned should there be any questions or resolvable matters regarding this application.

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

By: 

Ronald E. Perez
Registration No. 36,891

Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045
Telephone: (310) 824-5555
Facsimile: (310) 824-9696
Customer No. 24201